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W.A.No.2491 of 2018 and
W.P.No.24222 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.2491 of 2018 & W.P.No.24222 of 2022
and C.M.P.No.20203 of 2018, W.M.P.Nos.23193 & 23195 of 2022

W.A.No.2491 of 2018

1.The District Collector
Krishnagiri District,
Krishnagiri.

2.The Special Tahsildar
Adi Dravidar & Tribal Welfare Department
Krishnagiri District.

... Appellants

-Vs-

1.Gowrappan
2.Mahendran
3.Kullappa
4.Vasu @ S.K.Subramani Rao
5.S.A.Mustafa
6.Mohammed John
7.Mohan
8.Rajammal
9.Veerammal
10.Madhesan
11.Sudha
12.Deepa
13.Murali
14.The Block Development Officer
Krishnagiri.

... Respondents



W.A.No.2491 of 2018 and
W.P.No.24222 of 2022

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.7282 of 2012 dated 21.03.2018.

For Appellant : Mr.P.Kumaresan, Additional Advocate General
assisted by Mr.U.M.Ravichandran
Special Government Pleader

For Respondents : Ms.K.Abhirami
for M/s.V.Srimathi
-for RR 1 to 3 and RR 5 to 13, R4 - Died
Mr.R.Kumaravel
Additional Government Pleader - for R14

W.P.No.24222 of 2022

Senbagavalli ... Petitioner

-Vs-

- 1 The District Collector
Office Of The District Collector
Krishnagiri Krishnagiri District.
- 2 The Special Thasildar
Adi Dravidar And Tribal Welfare Department
Krishnagiri (old Dharmapuri District).
- 3 The Zonal Deputy Tahsildar
Office Of The Zonal Deputy Thasildar
Krishnagiri.
- 4 The Revenue Thasildhar
Office Of The Revenue Thasildhar
Krishnagiri District.
- 5 The Block Development Officer
Office Of The B.D.O Krishnagiri.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution praying for the issuance of a Writ of Certiorari call for the records in connection with the impugned notice U/s.6 of Tamil Nadu land Encroachment Act 1905 (Tamil Nadu Act III of 1905)



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dated 13/07/2022 issued by the 4th respondent and quash the same as illegal and improper.

For Petitioner : Mr.S.Kingston Gerald
For Respondents : Mr.P.Kumaresan, Additional Advocate General
Assisted by Mr.U.M.Ravichandran
Special Government Pleader - for R1 to R4

Mr.R.Kumaravel
Additional Government Pleader - for R5

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

Since the issue raised in this writ appeal as well as the writ petition are inter-connected, as per the orders of the Hon'ble Chief Justice, both these matters were tagged together and directed to be heard by this Bench. Accordingly, these two cases were taken up for hearing together and are being disposed of by this common judgment.

2. The necessary facts which are required to be noticed for the disposal of these two cases are as follows; That in respect of the land at Survey No.1/1A and 1/1C at Kothapettah Village, Krishnagiri Taluk and District (hereinafter referred to as the 'subject land') sought to be acquired by the State under the provisions of the Land Acquisition Act (Central Act) by issuance of G.O.3D/385 dated 10.06.1994 and G.O.No.3D.888 dated 09.11.1994 and award proceedings also was issued in Award No.4/94-95 dated 31.03.1995.



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3. The purpose of acquisition of the said land was for giving housing plots to Adi Dravida people. It is to be noted that, though there was a special enactment called Tamil Nadu Acquisition of Lands for Harijan Welfare Act (Tamil Nadu Act 31 of 1978), since that was challenged before this Court with regard to its validity and this Court since has struck down the validity of the said law ie., State Act, as against which matter has gone to the Hon'ble Supreme Court, and during the pendency of the appeals before the Hon'ble Supreme Court, if at all the State Government wanted to acquire the lands for the benefit of Adi Dravida people, they naturally had to depend only upon the Central Act and that is how insofar as this acquisition is concerned, it had been made under the Central Act.

4. Thereafter on 22.11.1994, the judgment was delivered by the Hon'ble Supreme Court in the said appeal arising out of the order passed by this Court with regard to the validity of the State Act, where the Hon'ble Supreme Court has declared the validity of the Act by reversing the judgment of the High Court. At the same time, the Hon'ble Supreme Court had made it clear that cases where award had not been passed till the date of the judgment of the Supreme Court ie., 22.11.1994, the proceedings taken under the Central enactment will not be valid and that only the State enactment has to be resorted to.

5. Having this legal position in mind, when the writ petition challenging the land acquisition proceedings in W.P.No.15790 of 1996 came up for consideration, a



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learned Judge of this Court by order dated 17.03.2003 has held that, since award has been passed in this land acquisition proceedings only on 31.03.1995 ie., well after the judgment of the Hon'ble Supreme Court, the land acquisition proceedings under the Central Act would be vitiated. Therefore, the learned Judge had quashed the impugned notifications of land acquisition proceedings as sought for in the said writ petition in W.P.No.15790 of 1996 dated 17.07.2003.

6. As against the said order passed by the writ Court, the State had filed intra-court appeal in W.A.No.1306 of 2006. The said writ appeal also was dismissed by a Division Bench of this Court by order dated 16.10.2006. Thereby, the order passed by the writ Court quashing the land acquisition proceedings had been upheld. As against the said order passed by the Division Bench, no further appeal had been filed. Therefore, the quashment of the land acquisition proceedings had become final.

7. It seems that in the meanwhile some of the beneficiaries had been allotted plots by the State and based on which, some of them under the guise of beneficiaries, had occupied part of the land. Therefore, in order to remove those occupants or encroachers, the land owners had filed contempt petition before the writ court before a learned Judge, who dismissed the said contempt petition as not maintainable. As against the said dismissal order, a letters patent appeal in L.P.A.No.3 of 2011 was filed by the land owners and that appeal was decided by



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another Division Bench of this Court by order dated 10.01.2012. In the said order, the Division Bench, though has dismissed the appeal filed by the land owners, which means they did not intend to interfere with the order of the learned Single Judge dismissing or closing the contempt petition, had made some observations also in the said order.

8. It has also been mentioned by the Division Bench in the said Letters Patent Appeal order that the land owners, after dismissal of the contempt petition on 11.07.2011 had remitted back the compensation amount which they have received, on 26.07.2011 to the Government. In the very same order, the Division Bench also observed that if the fact with regard to the receipt of compensation had been brought to the notice of the learned Judge who held the land acquisition proceedings invalid in the earlier proceedings, the learned Judge would have taken a different view.

9. Though those observations had been made, the fact remains that the land acquisition proceedings which was quashed by the order of the writ court dated 17.03.2003 since has been confirmed by the Division Bench order dated 16.10.2006, has become final.

10. Though liberty has been given to the State Government to go for a fresh land acquisition proceedings under the State Act, the State Government seems to



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have not taken any steps to go for a fresh land acquisition proceedings. When that being the position, the land owners had to once again approach this Court by filing a writ petition in W.P.No.7282 of 2012. This time the prayer was for a writ of mandamus to forbear the respondents and their men and agents from interfering with the land owners' rights and possession in respect of the land which is around 8.77 acres.

11. The said writ petition was heard and disposed of by the writ Court on 21.03.2018, where it had been brought to the notice of the learned Judge that the State Government was not in a position to acquire the land and their further stand was that, insofar as the encroachers are concerned, they would be removed.

12. Having taken note of the fact that the State Government was not intended to go for a fresh land acquisition proceedings and they have intended to remove the encroachers on the subject land and also taking note of the fact that in some of the plots temporary structures like thatched roof and asbestos roof have been put up by some of the encroachers and the remaining land was also encroached in the guise of beneficiaries, the learned Judge passed the following order on 21.03.2018 in W.P.No.7282 of 2012.

"6. This Court therefore, directs the respondents,

(a) to put the petitioners back in possession of the entire area except the plots in 70, 72, 74, 83, 123, 124, 128, 135, 136, 138 and 146 immediately.



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(b) The encroachers are directed to be evicted after issuing notice which must,

- (i) indicate the essence of this Order in Tamil,*
- (ii) enclose a copy of this Order in order to facilitate them to note why they are being removed; and*
- (iii) specifically indicate that copy of this Order is part of the said notice, within a period of three weeks from the date of receipt of a copy of this order.*

(c) The Respondents are directed to ensure that neither any fresh encroachment, nor any fresh occupation of any of the plots take place.

(d) As regards occupants of plot Nos: 70, 72, 74, 83, 123, 124, 128, 135, 136, 138 and 146, the respondents are directed to vacate them within four months from today.

7. With the above set of directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed. Post the matter for reporting compliance 01-8-2018."

13. Aggrieved over the same, the State preferred the present intra court appeal. Insofar as the writ petition in W.P.No.24222 of 2022 is concerned, it has been filed by one Senbagavalli, whose case as has been projected by the learned counsel for the petitioner is that, she is also one of the beneficiaries to whom free land patta has been given for the extent of 0.02 cents as Plot No.96 in the subject land, where she has put up some temporary structure and has been residing there.



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14. When that being the position, the Tahsildar concerned, pursuant to the order passed by the writ court in W.P.No.7282 of 2012, had issued a notice under Section 6 of the Land Encroachment Act ie., Act 3 of 1905 on 13.07.2022. This notice issued under Section 6 for removal of encroachment has been questioned in the said writ petition.

15. We have heard the submissions made by Mr.P.Kumaresan, learned Additional Advocate General assisted by Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the appellant State, Ms.K.Abhirami for Mrs.V.Srimathi, learned counsel appearing for respondents 1 to 3, respondents 5 to 13 in the writ appeal, and Mr.R.Kumaravel, learned Additional Government Pleader appearing for respondent No.14 in the writ appeal and fifth respondent in the writ petition.

16. After having heard their arguments and going through the materials placed before this Court, we feel that the following position has emerged.

- (a) That the land acquisition proceedings in respect of the subject land since has been quashed, which has been confirmed by the Division Bench, as against which since there has been no further appeal, it has become final.



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(b) It was stated by the State Government before the writ Court that the State is not intended to go for any fresh land acquisition proceedings.

(c) The compensation that has been paid also had been admittedly returned back by the land owners to the State authorities.

17. When that being the position, the occupation of the beneficiaries or any third parties in the name of beneficiaries whether or not patta being assigned to them for the subject land whether would be construed as a legal possession was a question. That in fact has been answered by the learned Judge in the order impugned. The learned Judge in fact has taken note of the fact that, in respect of Plot Nos.70, 72, 74, 83, 123, 124, 128, 135, 136, 138 and 146, which were being under occupation of some of the beneficiaries by putting some temporary structure, except those plots all other areas are under the occupation or encroachment by various third parties. Therefore, the learned Judge directed the State to immediately remove such encroachment.

18. Insofar as these plots are concerned, four months time had been given to the occupants to vacate the premises and the plot areas also to be handed over to the land owners. In this context, if the State Government has got any grievance, that must be projected before this Court, where it has been made clear by them before the writ court itself that they do not intend to go for any fresh land



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acquisition proceedings once again and the quashment of the land acquisition proceedings since has become final as on date, there has been no valid land acquisition proceedings initiated or pending in the eye of law.

19. When that being so, the subject land, if at all being occupied by anyone either as occupier or encroacher or even in the name of beneficiary with or without assignment order, all those occupations are only to be treated as encroachment. Therefore, the learned Judge had rightly come to the conclusion that such of those encroachments should be removed. Insofar as some of the plots, since those were in occupation by putting some temporary structure, four months time has been given by the learned Judge. In respect of other areas, immediate action for removal of encroachment drive had been directed.

20. These directions given by the learned Judge in Paragraph 6 of the order impugned, in our considered opinion, does not warrant any interference from this Court. The reason being that the land acquisition proceedings have been quashed and that decision of this Court has become final. Thereafter, no further land acquisition proceedings have been made and the Government also expressed its view that it does not have any intention to go for fresh land acquisition proceedings and compensation if any paid pursuant to the award also has been returned back to the State Government and this has also been recorded in the Division Bench judgment. When that being the position, with or without assignment anyone has



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been in occupation of the subject land, they are liable to be treated only as encroachers and they must be removed from the subject land.

21. However, if at all these beneficiaries had been in occupation for some years, of course pursuant to the allotment given to them by way of issuance of fresh patta or assignment and pursuant to which if they put up some temporary structures, where they have been residing, their immediate removal must be made by providing them alternative site.

22. The State Government being a welfare State, already extended to give lands to these beneficiaries who belong to Adi Dravidar community as landless poor for the purpose of constructing dwelling houses. Therefore, such a welfare approach cannot be defeated. Therefore, the State Government immediately shall take steps to identify alternative land for those beneficiaries who had already been occupation so far, and who have not been removed from their occupation. However, only after making the allotment of alternative sites, this anti-encroachment drive can take place and all the encroachments can be removed, provided if within the time frame to be fixed by the State Government they have not vacated.

23. For all these reasons, we pass the following orders in this writ appeal and writ petition.



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- (a) The order impugned in the writ appeal has to be sustained and accordingly it is sustained.
- (b) As a sequel, there shall be a direction to the appellant State to go ahead with the enumeration as to how many of the allottees or assignees had already occupied their respective plots in the subject land and put up permanent or semi-permanent structure and based on such enumeration, alternative land shall be identified and distributed to them. Such exercise shall be undertaken within a period of three months from the date of receipt of a copy of this order.
- (c) Once the alternative arrangement is made and the lands are allotted, without seeking any further extension of time, the encroachers or occupiers or beneficiaries shall vacate the respective land assigned to them.
- (d) Since the writ petitioner also has been given an assignment of fresh patta for 0.02 cents in the subject land as Plot No.96 and she also claimed to have put up some temporary structure, the aforesaid direction would *mutatis-mutandis* be made applicable to this writ petitioner also.
- (e) The State Government must take immediate steps and endeavour to comply with above directions. If the State Government makes any delay in complying with the directions, consequently the removal of encroachments or occupants from the subject land also would get delayed. Therefore, the time limit prescribed by this Court should be strictly complied with by the State Government.



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(f) In order to monitor the progress and make a compliance report, even though this writ petition and writ appeal are disposed of, the matters shall be listed once again in the first week of March 2024.

(g) It is made clear that, it is also open to the State Government to explore the possibility of giving alternative site equal to the value of the subject land to the land owners provided for such arrangement the land owners come forward to negotiate with the State Government and to agree upon.

(h) It is further made clear that for the aforesaid compliance, on behalf of the State Government the concerned District Collector shall take all endeavour with the consultation of the Government and to file a report as indicated above.

24. With the above directions, the writ appeal and the writ petition are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (G.A.M.,J.)
29.11.2023

Index : Yes
Internet : Yes
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Note : Issue the order copy on 06.12.2023



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R.SURESH KUMAR, J.
and
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